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Attorneys for the Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

EARLINE COLE, CLETUS

COLE, and PRECIOUS

BEARCRANE, a minor child,

Plaintiffs,

v.

FEDERAL BUREAU OF

INVESTIGATION, SALT LAKE

CITY FIELD OFFICE, FEDERAL

BUREAU OF INVESTIGATION,

BILLINGS OFFICE, and

MATTHEW ORAVEC,

Defendants.

CV-09-21-BLG-SEH-TJC

DEFENDANT FBI'S

MOTION FOR

SUMMARY JUDGMENT

Defendant FBI respectfully moves the Court for summary judgment, pursuant to Federal Rule of Civil Procedure 56(a), on Plaintiffs' sole remaining Fifth Amendment equal protection claim, seeking only equitable relief, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 702-706. *See* Second Amended Complaint, ¶¶ 10, 57-58, and at 31 (Prayers for Relief) (Doc. 159). The FBI is entitled summary judgment on the grounds that: (1) Plaintiffs' claim against the FBI under the APA cannot survive because the FBI's actions are not reviewable as they are committed to agency discretion by law; (2) Plaintiffs lack standing to sue and obtain the broad declaratory relief they request; and (3) Plaintiffs cannot demonstrate a genuine dispute of material fact on the issue that the FBI allegedly erected a barrier preventing them from accessing statutory crime victim benefits out of racial animus toward Native Americans.

As required by L.R. 7.1(c)(1), prior to filing, the undersigned conferred with Plaintiffs' counsel by electronic mail to ascertain Plaintiffs' position and was informed that Plaintiffs oppose this motion.

This motion is supported by a Memorandum of Law (Doc. 229), and a Statement of Undisputed Facts (SOUF) (Doc. 230), filed contemporaneously herewith as required by L.R. 7.1(d)(1)(A) and L.R. 56.1(a), respectively. This motion is further supported by the pleadings, documents referenced or embraced

by those pleadings, materials that are part of the public record, and all of the files and proceedings filed in this case, as well as the exhibits annexed to the FBI's SOUF.

THEREFORE, Defendant FBI respectfully requests the Court to grant this motion, thereby awarding the FBI summary judgment as to Plaintiffs' sole remaining claim, and dismiss the Second Amended Complaint (Doc. 159) in its entirety, with prejudice.

Dated: March 29, 2019

Respectfully submitted,

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/s/James G. Bartolotto
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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2019, a true and correct copy of the foregoing **DEFENDANT FBI'S MOTION FOR SUMMARY JUDGMENT** was filed with this Court electronically pursuant to L.R. 1.4(a) and served electronically pursuant to L.R. 1.4(c)(2), or by mail on any party to this action unable to accept electronic filing. Notice of this filing will be sent by electronic mail (e-mail) to Plaintiffs' counsel and all parties by operation of the Court's electronic filing system (ECF) or by mail to any party unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF System. This Motion comports with L.R. 1.5, 7.1(b), 7.1(d)(1)(A), 7.1(d)(2), and 56.1(a).

/s/James G. Bartolotto
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